EXHIBIT T

SUPREME COURT OF THE STATE OF NEVADA

NANOPIERCE TECHNOLOGIES, INC.,   SUPREME COURT
a Nevada Corporation; STEPHEN SEITZ,   CASE NO. 45364
an individual; JANE SEITZ, an individual;
KATHY KNIGHT-MCCONNELL, an   DISTRICT COURT
individual; JAMES STOCK, an individual;   CASE NO. CV04-01079
MAUREEN O'SULLIVAN, an individual;
and HELEN KOLADA, an individual,

                    Appellants,

vs.

THE DEPOSITORY TRUST AND CLEARING
CORPORATION; THE DEPOSITORY TRUST
COMPANY; AND THE NATIONAL
SECURITIES CLEARING CORPORATION,

                    Respondents.
_____/

**BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION,
<u>AMICUS CURIAE</u>, ON THE ISSUE ADDRESSED**

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                              (Pursuant to Nev. S. Ct. R. 43)

                              Securities and Exchange Commission
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1   returned. Id. Borrowed stock is returned to the lender through normal allocation

2   in the continuous net settlement system as securities become available. Id.

3   Alternatively, the lender, as any other member with a long position, may initiate

4   buy-in procedures by submitting a Notice of Intention to Buy-in. Until the

5   securities are returned, the lending member no longer has ownership rights in

6   them, and therefore cannot sell or re-lend them.

7   **4.   Plaintiffs' incorrect descriptions of important aspects of the**
8   **Continuous Net Settlement system and the Stock Borrow**
9   **Program**

10   This summary of the applicable NSCC rules makes clear that plaintiffs'

11   descriptions of the continuous net settlement system and the stock borrow program

12   are flawed in important respects. Among their erroneous allegations are that (1)

13   the stock borrow program is the only way that fails to deliver can be cured, (2)

14   NSCC is at fault for not requiring buy-ins, and (3) the stock borrow program

15   results in the creation of phantom securities.

16   *First*, a receiving member that has failed to receive securities can obtain

17   those securities through a buy-in that does not involve the stock borrow program

18   at all.

19   *Second*, NSCC does not have the authority to require buy-ins. As noted, its

20   role in the stock borrow program is automated and non-discretionary -- the only

1   entity authorized by the rules to require a buy-in is the receiving member. If a

2   long position remains open for an extended period of time, that is because the

3   receiving member has not initiated a buy-in, presumably because that member is

4   willing to rely on the fact that it will eventually be allocated securities pursuant to

5   NSCC's procedures. These statements are true whether the entity that is owed

6   securities is the original purchaser who did not receive delivery, or a firm that has

7   loaned securities to the stock borrow program.

8   Furthermore, NSCC has no mechanism for determining whether particular

9   fails to deliver have occurred because of illegal naked short selling or for some

10   legitimate reason. Nor are there any standards or rules that would guide its

11   discretion in deciding whether to make a buy-in, if it were to undertake do so. In

12   short, the assertion that NSCC is in some way culpable for failing to initiate buy-

13   ins is contrary to the clear terms of the Rules.

14   *Third* and finally, neither the continuous net settlement system nor the stock

15   borrow program creates artificial securities. The number of securities issued and

16   outstanding is determined by the security issuer and is reflected in the issuer's

17   records of registered ownership; nothing that happens in the course of clearing and

18   settling trades, including any action taken by NSCC, can change that number.

1   As explained above, the continuous net settlement system is essentially an

2   accounting system that records delivery and receive obligations among NSCC

3   members. These obligations do not reflect *ownership positions*. Ownership

4   positions, as opposed to the deliver and receive obligations recorded by NSCC, are

5   reflected on the records of DTC.

6   The security's issuer maintains its own record of all of the registered

7   ownership positions of its securities. All shares deposited at DTC are recorded on

8   the issuer's records in the name of DTC's nominee, Cede & Co., and constitute

9   some or all of the issuer's securities issued and outstanding. The fact that

10   securities settle through the continuous net settlement system, or that they are

11   deposited at DTC, does not increase the number of the issuer's shares.

12   As to the stock borrow program, as noted above and as further explained by

13   the Commission's staff in guidance on the Commission's website, the securities

14   loaned by NSCC members for use in the program must be on deposit at DTC, and

15   are debited from members' accounts when the securities are used to make delivery.

16   See Responses to Frequently Asked Questions Regarding SHO (Jan. 3, 2005),

17   http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm. Once a member's

18   securities are used for delivery to another member, the lending member no longer

1   has ownership rights in those securities, which means that it cannot sell or re-lend

2   them until such time as the securities are returned to its DTC account.

3   When securities are not available to be loaned through the the stock borrow

4   program, the buyer is required to either wait for delivery or initiate a buy-in.

5   Neither waiting nor buying-in increases the number of issued and outstanding

6   securities. All that the stock borrow program does is shift the *consequences* of the

7   failure to deliver from a buyer that has not affirmatively indicated a willingness to

8   wait for delivery of its securities to a lender that *has* indicated that it is willing to

9   wait. This shift cannot possibly increase the number of securities issued, any more

10   than the buyer's decision to either wait or initiate a buy-in can do so. Therefore,

11   plaintiffs' assertion that the stock borrow program creates securities is incorrect. [6]
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[6]   While the number of securities outstanding does not change because
       of the clearance and settlement system, the aggregate number of
       positions reflected in customer accounts at broker-dealers may in fact
       be greater than the number of securities issued and outstanding. This
       is due in part to the fact that, as noted above, broker-dealers may
       credit customer accounts with securities entitlements in anticipation
       of delivery of the security to the broker-dealer.